No. 80-2119

Office-Supreme Court, U.S.
FILED
JUN 15 1981
ALEXANDER L. STEVAS,
CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 19_____

CHARLES D. CRONEN, PLAINTIFF, APPELLANT,
PETITIONER

V.

THE CITY OF GALENA PARK, TEXAS DEFENDANTS
RESPONDENT

ON WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS FOR THE 1ST SUPREME JUDICIAL DISTRICT OF TEXAS AT HOUSTON, TEXAS

PETITION FOR CERTIORARI

CHARLES D. CRONEN
P. O. BOX 5371
PASADENA, TEXAS 77505
NO TELEPHONE
PETITIONER, PRO SE

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 19_____

CHARLES D. CRONEN, PLAINTIFF, APPELLANT, PETITIONER

V.

THE CITY OF GALENA PARK, TEXAS DEFENDANTS RESPONDENT

ON WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS FOR THE 1ST SUPREME JUDICIAL DISTRICT OF TEXAS AT HOUSTON, TEXAS

PETITION FOR CERTIORARI

CHARLES D. CRONEN
P. O. BOX 5371
PASADENA, TEXAS 77505
NO TELEPHONE
PETITIONER, PRO SE

QUESTIONS RAISED

The following questions are presented for review:

1. Whether due process of law entitles a litigant to a complete record of the proceedings?

2. Whether the Court below denied Mr. Cronen due process of law in denying his request for a continuance?

3. Is the abolition of the right to sue a city for the negligence of its employees, which was a right at English Common law, an abridgement of the privilidges and immunities guaranteed by the Fourteenth Amendment of the United States Constitution?

4. When the state legislature had adopted the Common law of England, in absence of a statute to the contrary, must that Common law apply equally in each case of a principal and employee or master and servant relationship

where an injured party may be deprived of his right of recovery?

5. Does establishment of a doctrine of municipal immunity from tort liability violate the Fourteenth Amendment to the United States Constitution by abridging the priviledge of a citizen to recover for injuries done him, lessening his equal opportunity for Justice?

6. Does adoption by the state court of a doctrine of immunity abridge the priviledge and immunities guaranteed by the Fourteenth Amendment of the United States Constitution infringing on the right to seperation of powers which is the foundation of the legal system in this country?

7. Does a doctrine of municipal immunity from tort liability violate the Fourteenth Amendment to the United States Constitution by setting up an unreasonable classification among tort-

feasors, as opposed to other principal and employee relationships?

8. Does gross deviation in the state court's opinion from the provisions set out in a state statute enacted by the state legislature violate a citizen's right to equal protection or abridge his priviledge of seperation of powers when the opinion is used as the basis for a judgement which denys his right of recovery against a defendant?

LIST OF ALL PARTIES TO THE PROCEEDING IN THE STATE COURT

1. Charles D. Cronen Plaintiff-Appellant
2. City of Galena Park, Texas Defendant Appellee

other defendant-appellees

3. Jim Nix
4. Larry Donnelly
5. Willard E. Cook
6. Dale Finney
7. Joe Price
8. Gerda L. Frederick

Parties numbered 1 and 2, above, have an interest in this review.

Petitioner believes that parties numbered 3 thru 8, above, have no personal interest in the outcome of this review because the state court has correctly found that police officers are liable for false imprisonment and any decision as regards the city will not affect the state court's Judgement concerning them.

TABLE OF CONTENTS

Questions Presented for Review	ii
List of all Parties	v
Table of Contents	vi
Table of Authorities	vii
Opinions Delivered Below	2
Statement of Jurisdiction	4
Constitutional Provisions and Statutes	12
Statement of Case	14
Reasons for Allowance of the Writ	32
Conclusion	45
Prayer	46
Appendix A: Texas Supreme Court Judgement	49
Appendix B: Judgement and Opinion of the Texas Court of Civil Appeals	51
Appendix C: Judgement of the District Court	63
Appendix D: Notice of Appeal	67
Appendix E: Article 6252-19 Texas Tort Claims Act	69
Appendix F: Orders Denying Rehearing	90

TABLE OF AUTHORITIES

Cases:

Adam v. Saenger 303 US 59 6

American Ry. Exp. Co. v. Levee 263 US 19 6

Atchison, Topeka & Santa Fe R. Co. v. Matthews 174 US 96 34

Barnes v. Dist. of Columbia 91 US 540 28

Brown v. US 377 F Supp 530 20

Cantwell v. Connecticut 310 US 296 43

Chicago & E.I.R. Co. v. Industrial Commission 284 US 296 6

City of Austin v. Daniels 322 SW2d 384 22

City of Chicago v. Sturges 222 US 313 44

City of Clarendon v. Betts 174 SW 958 22

City of Ft. Worth v. Crawford 12 SW 52 22

City of Galveston v. G. Posnainsky 62 Tex 118 28

Concordia Fire Insurance Co. v. Illinois 292 US 535 34

Department of Banking, State of Neb. v. Pink 317 US 264 6

English Common Law Cases alphabetically arranged on page 8

Ex parte Hejda 13 SW2d 57 23

Hartford Steam Boiler Inspection and Insurance Co. v. Harrison 301 US 459 34

Kentucky Finance Corp. v. Paramount Auto Exchange Corp. 262 US 544 34

Magna Charta of King John 1215 AD; Section 2, 52 39

Medberry v. Ohio 65 US 413 11

Meyer v. Nebraska 262 US 390 40

Niles v. Dean 363 SW2d 317 23

O'Dowd v. Russell 81 US 402 5

Old Dearborn Distributing Co. v. Seagram Distillers Corp. 299 US 183 34

Prince v. Massachusetts 321 US 158 43

Robertson v. Robertson 291 SW2d 452 24

Schneider v. Irvington 308 US 147 43

Schultz v. City of Houston 551 SW2d 494 31

Sherbert v. Verner 374 US 398 40

Smith v. Texas 233 US 630 34

Thomas v. Collins 323 US 516 41

Truax v. Corrigan 257 US 312 34

United States v. Carolene Products Co. 304 US 144 43

Washington National Insurance Co. v. Board of Review 64 A2d 443 33

Constitutional Provisions:

Texas Constitution Article 1, Sec 13 43

Texas Constitution Article 3, Sec 30 29

U.S. Constitution Amendment 9 39

U.S. Constitution Amend. 14, Sec 1 32

Statutes and Rules:

Texas Rev. Civil Stat. Art. 1 40

Texas Rev. Civil Stat. Art. 6252-19 31

Texas Rules of Civil Procedure Rule 376b 18

28 United States Code, Sec 1257(2,3) 6

Miscellaneous:

Commentaries on the Common Law, Herbert Broom 4th London Ed. 8

Commentaries on the Laws of England, (1765) Sir William Blackstone, Knight, Court of Common Pleas 8

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 19____

Charles D. Cronen, Petitioner

v.

the city of Galena Park, Texas

Respondent

On Writ of Certiorari to the Court of Civil Appeals for the 1st Supreme Judicial District of Texas at Houston, Texas

PETITION FOR CERTIORARI:

To the Honorable Warren E. Burger, Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

Charles D. Cronen, the Petitioner, comes before your COURT and prays that a Writ

of Certiorari issue to the Court of Civil Appeals for the 1st Supreme Judicial District of Texas to forward the complete transcript of the record, briefs and all proceedings had below, so as the COURT may review the Judgement of the court below entered on October 23, 1980 in the above-entitled cause which was numbered 17769 in that state court.

OPINIONS DELIVERED BELOW

This review is sought after a refusal by the Texas Supreme Court to grant a writ of error to the Court of Civil Appeals of Texas, 1st district. The judgement refusing the writ (no reversable error) was entered on March 18, 1981, and is printed in the appendix A hereto. The Judgement is not reported on the date of this writing.

The judgement and opinion of the Court of Civil Appeals for the First Supreme

Judicial District of Texas is printed in the Appendix B, hereto, and reported as Cronen v. Nix and the city of Galena Park et. al., 611 SW2d 651, March 31, 1981. The judgement of the Court of Civil Appeals was entered on October 23, 1980. Motion for Rehearing was overruled on December 11, 1980 (Appendix F). The judgement in part reversed and in part affirmed the judgement of the 151st Judicial district court of Texas in favor of municipal and qualified immunity from tort liability for all defendants. Review is sought of the part of the judgement affirming the district court judgement in favor of municipal immunity for the city of Galena Park.

District Court judge John L. Compton sustained a motion for summary judgement for all defendants on April 7, 1980. Defense attorney Byron Lee agreed to draw an order. The judgement of the 151st

Judicial district court is printed in Appendix C, hereto, and was entered on April 25, 1980 after being presented to L.D. Goddard, a visiting judge, who, according to the record, was requested by Judge Compton and assigned on April 7, 1980 (transcript pg. 84). The district court did not write an opinion and although requested by Appellant, at page 108 and 112 of the record, to make findings of fact and conclusions of law none were filed by the district court. Judge Goddard has also presided as a visiting Judge at another of Petitioner's causes of action which is not related to this cause.

STATEMENT OF JURISDICTION

The judgement of the Court of Civil Appeals for the 1st Supreme Judicial District of Texas was rendered and entered of record on October 23, 1980. The judgement affirms the district court

judgement in favor of municipal immunity for defendant city of Galena Park and reverses the judgement of the district court as respect all other defendants regarding qualified immunity. This review is sought concerning the part of the higher court's affirmance of immunity for the city. Appellant's first and appellees Motions for Rehearing were overruled on December 11, 1980. Although Appellant's Motion To Extend the Time for Filing A Motion for Rehearing was granted on November 27, 1980 the Court refused leave to file the Motion on January 22, 1981 (Appendix F). That motion for leave, along with the intended Motion for Rehearing was presented to the court on December 26, 1980, a date which was within the time extended for filing the motion. The case O'Dowd v. Russell, 81 U.S. 402, is a case presenting the issue of an appellate judgement

which has reversed a lower court's judgement as to one defendant but affirmed the ruling as to the other defendants and holds that the judgement is final, giving the Court jurisdiction of the ruling (Motion to Dismiss, denied).

The Supreme Court of Texas REFUSED to hear the cause (Writ Refused, No Reversable Error) on March 18, 1981. Chicago & E.I.R. Co. v. Industrial Commission of Illinois, 284 US 296; Adam v. Saenger, 303 US 59; Department of Banking, State of Neb. v. Pink, 317 US 264; American Ry. Exp. Co. v. Levee, 263 US 19. There are no other Texas Courts to which Petitioner may take his appeal.

Notice of Appeal was given to all parties, a copy being attached as Appendix D, herein.

Petitioner believes that Jurisdiction is conferred on the United States Supreme Court by 28 USC, Section 1257 (2,3).

This case, a common law action for damages arising out of an incident of false imprisonment, presents questions of whether the judicial doctrine of municipal immunity from tort liability adopted by the Texas Court, without authority of statute is repungant to the priviledges and immunities clause or the equal protection clause of the 14th Amendment of of the United States Constitution. The legislature of the State of Texas has enacted the English Common Law as the rule of decision so far as it is not inconsistant with the Constitution and laws of the state until it is altered or repealed by the legislature; Texas Revised Civil Statutes Article 1.

The right to sue a municipal corporation for the negligence of its' employees and the tort liability of the corporation for damages resulting to a third person are well established in the

English Common Law: "For a duty or charge upon a corpn., every <u>particular</u> member thereof is not liable, but process ought to go in their public capacity. London City Case (1680) 86 E.R. 226;

A.G. and Dommes v. Basingstone Corp., 45 L.J. Ch. 726

Barnes v. Dist. of Columbia 91 US 540, and the cases listed therein.

Bartonshill Coal Co. v. Reid, 3 Macq. Hl. Ct. 282-4

Clark v. Inhabitants of Blything 2 B&C 254

Coe v. Wise 7 B&S 831 Ex. Ch.

Commentaries on the Common Law, Herbert Broom LLD, 4th London Edition; Pg 100, 690-693, 818

Commentaries on the Laws of England (1765), Sir William Blackstone, Knight, Court of Common Pleas; Intro. pg 76-78, 114-116; Book I pg 427, 429-432, 471, 477

Cook v. Pimhill 8 East 173

Fenton v. City of Dublin Steam Packet Co. 8 Ad&E 835

Hartwell v. Ryde Commissioners 3 B&S 361

Henley v. Mayor of Lyme Regis, 5 Bing 91

London City Case 86 E.R. 226

Lynn v. Turner Cowp. 86

Martin v. Temperly 4 Q.B. 292

McKinnon v. Penson 8 Exch 319, 9 Exch 609

Nicholl v. Allen 1 B&S 936

Rigby v. Hewitt 5 Exch 243

Scott v. Mayor of Manchester 1 H&N 59

Sinclair v. Broughton & Government of India 47 L.T. 170

Smith v. Birmingham & Staffordshire Gas Light Co. 1 Ad&El 526

Spokes v. Banbury Board of Health L.R. 1 Eq. 42,51

In regards to liability of the corporation the common law of England makes no distinction between private and public corporations. All are held liable. Municipal corporations are public lay corporations, to which the maxims of common law apply. The cases listed are typical of all types of public corporations, performing a governmental function. The right is not inconsistent with the Texas Constitution or laws of the state. The Texas legislature has not altered or repealed that right in respects to this case. The Texas court, however, has adopted a judicial doctrine of municipal immunity from tort liability. The doctrine establishes an unreasonable classification among tortfeasors as opposed to other principal and employee relationships when viewed frcm the standpoint of the injured party. It abridges his common law right to sue a city form the negligence of its' employ-

ees. It abridges his right to equal justice and the equal chance to use the court to obtain his remedy. It abridges the right of a citizen to the seperation of powers which is the very foundation of the legal system in this country. The questions were timely raised in the Court of first instance by motions, or by bills of exception (Medberry v. Ohio 65 US 413) based upon oral argument and exception, which are present in the record. The questions have continued upon appeal and petition for writ of error. The state court has upheld its judicial doctrine against the questions.

The district court judge also ruled that Plaintiff was not entitled to a continuance when he had inadequate time to fully prepare his opposition to defendant's motion for summary judgement and that Plaintiff was not entitled to have the proceedings recorded for preservation

of a complete record. Plaintiff questions whether these rulings are repungant to the 14th Amendment to the United States Constitution and have denied Plaintiff due process of law because he had not the opportunity for a fully fair hearing before he was deprived of his right to obtain damages from the defendant city of Galena Park and because he does not have a fully complete record for appellate review . The questions were similarily raised in the court of first instance, and upon appeal. They are present in the record.

CONSTITUTIONAL PROVISIONS AND STATUTES

United States Constitution Amendment Fourteen; Section One:

All persons born or naturalized in the United States, and subject to the juris-

diction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the priviledges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

United States Constitution Amendment 9:

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Texas Constitution Article 3, Section 30:

No law shall be passed, except by bill, and no bill shall be so amended in its passage through either House, as to change its original purpose.

Texas Constitution Article 1, Section 13:

...All Courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law.

Texas Revised Civil Statutes Article 1:

The common law of England, so far as it is not inconsistant with the Constitution and laws of this State, shall together with such Constitution and laws, be the rule of decision, and shall continue in force until altered or repealed by the Legislature.

Texas Revised Civil Statute Article 6252-19:

Due to its length this article is included as Appendix E.

STATEMENT OF THE CASE

Plaintiff, Charles D. Cronen, was lock-

ed in the city jail of the city of Galena Park, Texas against his will and held there by defendant police officers for over ten (10) hours, on the 24th of August, 1977, for allegedly running a red light. The restraint was during normal daytime business hours, on a typical working day during the week, when magistrates were available. Defendants refused Plaintiff a recognizance, refused the opportunity to go obtain requested cash bond, refused to take Plaintiff before a magistrate, and did not offer Plaintiff a traffic citation as required by the Texas Statutes (transcript pg 68-83). This is evidence.

Plaintiff sued the city of Galena Park and it's officers for damages in a common law action for unauthorized restraint of his liberty (transcript pg 2-25). Defendants counsel moved for summary judgement for all defendants based upon a judicial

doctrine of municipal immunity from tort liability for the city of Galena Park and upon qualified immunity for its individual police officers. The officers did not show that the restraint was lawful or reasonable. The city presented no evidence in its behalf. The verified petition (transcript pg 5-6) and affidavits presented as evidence in support of or opposed to the summary motion shows that the defendant police officers were acting in the course of employment as employees of the city of Galena Park:

transcript pg 58 "...in the ordinary futherance of my duties..." by Jim Nix; "...within the scope of my duties and responsibities..." by Joe Price (pg 58), Larry Donnelly (pg 60), by Dale Finney (pg 64); and also that they were acting at what they believed was the instruction of the city of Galena Park by enforcing the laws of

Texas and the ordinances of the city. The city of Galena Park is a voluntarily chartered home rule city established as a municipal corporation (transcript pg 2). Plaintiff contends that the city had failed to screen its officers for ability and competence before entrusting them to their respective offices, failed to keep its police force up to the proper level of proficency, failed to require the officers to do their duty, failed to provide a magistrate during normal hours when the city knew or should have known that pretrail detainees were being held in its jail and created public nuisance in both the operation of its jail and traffic system (transcript pg 16, 69(I), 74, 75, 76, 58).

Prior to the hearing of defendants Motion for summary judgement in the court of first instance, Plaintiff requested that all hearings be recorded for the

preservation of a record under the Texas Rule of Civil Procedure Rule 376b, which provides:

> "(a) The duties of official court reporters shall be performed under supervision of the presiding judge of the court and shall include, but not limited to: (1) attending all sessions of court...
>
> (2.) making a full record of jury arguments and voir dire examinations when requested to do so by the attorney for any party to a case, together with all objections to such arguments, the rulings and remarks of the court thereon;"
>
> (4.) preparing official transcripts of all such evidence or other proceedings, or any portion thereof,..."

The motion appears at page 104 of the transcript of the record. The motion specifically requests that all arguments be recorded along with objections and the rulings of the court. Defense counsel concurred in Plaintiff's request to have the proceedings recorded. When asked the purpose of the motion by the judge Plaintiff replied that it was to preserve a record of the hearing for further review by a higher court, if such should become

necessary. Plaintiff argued to the judge that he felt it was his right under due process of law that he should have the proceedings recorded. Judge Compton denied the motion on April 7, 1980 but did not make a docket entry (transcript pg 186). Plaintiff objected but since the proceedings were not recorded, this was not preserved. Plaintiff timely filed a bill of exception with the court on June 4, 1980 (transcript pg 145). Defense counsel would not approve the bill. Plaintiff also filed a partial summary of the facts in narrative form to help preserve the proceedings. The summary is not complete because it is based upon memory, upon facts expected to be necessary at the time of filing, and is in summary rather than detailed form. Defense counsel would also not approve this statement of facts. Neither they would present any objections.

Therefore, Plaintiff moved the court to require defense counsel to present their objection to his bills of exception and statement of facts. That hearing was also not recorded. Defense counsel Lee refused to present any objection unless the court ordered him to do so. Counsel Mr. Irwin failed to appear. Judge Compton would not order anyone to do anything (transcript pg 186, June 9, 1980). Plaintiff's bill of exceptions were taken by the Texas Court of Civil Appeals as approved by law, shown be summaries of the points of error set out in the opinion (Appendix B). In re S.D.'s Marriage, 511 SW2d 606, Bradford v. Knowles, 33 SW 149. The original argument was that due process entitled Plaintiff to a complete record. This was also the oral argument to the court of appeals. A case from the Federal District Court in Dallas, Brown v. U.S., 377 F Supp 530, was used to support the point in

Plaintiff's appellate brief (Appellant's Brief, pg 8-9). The opinion of the court of civil appeals (Appendix B), however, is based upon the oral argument of defense counsel Lee, to wit: that oral testimony was not allowed. This point was not at issue. The arguments, rulings and exceptions, along with any other occurances that may help clarify the record as to the full extent of the questions involved, are the portions of the record which Plaintiff sought to be preserved on this appeal. No oral testimony was presented or sought to be presented at the hearing.

This question was presented to the Texas Supreme Court in Plaintiff's petition for writ of error as point of error No. 10 (Writ, pg 8, 12); Refused.

The next question that arose was whether due process entitled Plaintiff to a reasonable opportunity to prepare his op-

position to defendants motion for summary judgement. Prior to hearing that motion in the district court, Plaintiff moved for a continuance because he had not had adequate time to prepare for the hearing and had not been able to obtain evidence material to one of his points in reply to a defense plea of municipal immunity (transcript pg 84). He made affidavit of these allegations (transcript pg 87-89), which he feels gives enough reason to believe that he was unable to fully prepare, and that evidence that the city of Galena Park was operating a public nuisance did exist but he had been unable to obtain evidence at the time of the hearing. Texas law holds even a city liable for the operation of a public nuisance even in connection with a government function; City of Austin v. Daniels 322 SW2d 384; City of Ft. Worth v. Crawford 12 SW 52; City of Clarendon v. Betts 174

SW 958. Plaintiff argued in both state courts that due process entitled him to a reasonable opportunity for a fair hearing. Similarly to the first ruling the objection appears in the record as a bill of exception (transcript pg 149), because the proceedings were not recorded. The motion came before the court (transcript pg 85) but there was no order or docket entry made (transcript pg 186) although the judge did deny the continuance. The point is briefed on appeal at page 9-10 of appellant's brief. The Texas case "Ex parte Hejda", 13 SW2d 57, is cited in support, stating:

> "Due process of law ordinarily includes a hearing with reasonable opportunity to prepare therefore."

The opinion of the court of appeals (Appendix B, page 56) is based upon a rewording of the case report in the Texas case Niles v. Dean, 363 SW2d 317. The opinion reads:

"Denial of a motion for continuance based on lack of time to prepare for trial is not an abuse of discretion."

The report of the Niles decision in Note 7 reads:

"overruling of a motion for continuance filed by defendant who was served with non-resident notice two months and seven days prior to trial was not an abuse of discretion, although case was set on the sixth of the month for trial on the eighthteenth."

The text of that report reads:

"It is well settled that a motion for continuance is addressed to the sound discretion of the law, but that the overruling of a motion is subject to review. Robertson v. Robertson, ...291 SW2d 452. We conclude that no abuse of such discretion is shown. The statement as to both the facts and law set out in Scaling Oil Corporation v. Head, ...241 SW 767, are applicable to this case as follows:

"This application is not a statutory motion, and shows that the continuance was sought for the sole purpose of enabling the Plaintiff in error to prepare its defense to the action, without indicating facts or conditions which show the absence of opportunity for such preparation. The record shows that the Plaintiff in error was fully apprised, more than two months in advance of the trial, of the issues it would be called upon to meet, and there is nothing to indicate that this time was not amply sufficient to

enable it to prepare its' defenses."

The case involving Mr. Cronen is of a different nature. Plaintiff made his affidavit (transcript pg. 87-89) stating some of the specific reasons he was unprepared. The question was also phrased in his preliminary motion for rehearing contending that time to prepare for trial is a constitutional right, as being a part of the due process procedure, and the length of time necessary is dependant on the individual facts of each case.

The Court of Civil Appeals denied that the reason is grounds to rehear the cause. The objection is presented to the Texas Supreme Court as point of error No. 9 in his petition for writ of error (writ pg 8, 11); Refused.

The next question to appear in the trial court was whether the abolition of the right to sue a city for the negligence of its' employees which was a right

at English Common Law, is an abridgement of the priviledges and immunities guaranteed by the 14th Amendment. The question was raised in oral argument upon Plaintiff's Written Motion for Judicial Notice which was presented to the Court prior to hearing defendant's summary motion. Unfortunately, the argument, although requested by Plaintiff, was not preserved for the record (Bill of Exception No. 1). The motion (transcript pg. 90-103) sets out the Common Law of England pertinent to the cause. Attached to the motion are excerpts from the Texas and United States Constitutions as grounds. Another question was does establishment of a doctrine of municipal immunity from tort liability violate the 14th Amendment by abridging the priviledge of a citizen to recover for injuries done him, lessening the equal opportunity for Justice, irregardless of the political status of the tort-feasor. Also

to be considered is when the state legislature had adopted the common law of England, in absence of a statute to the contrary, must that common law apply equally in each case of a principal and employee relationship where an injured party may be deprived of his right of recovery. The lower court upheld the doctrine against the questions. Exception to the trial court's ruling was made by Plaintiff and preserved by bill of exception (transcript pg. 153). The court of civil appeals overruled the point in its' opinion. The point was brought to the Texas Supreme Court as point of error No. 1 in Plaintiff's petition for writ of error (writ, pg. 5,9); Refused.

The common law is briefed in Appellant's Brief (pg. 10-29) to supplement the Motion for Judicial Notice (transcript pg. 90-103). It holds all types of public corporations, including munici-

pal corporations, liable to third persons.

There are, however, case notes from Texas case reports which indicate that immunity is the law in Texas. These were based upon inaccurate briefs from attorneys and distortions of prior case opinions. Many of these points are directly contrary to the principals set forth in earlier Texas cases. One of important note City of Galveston v. G. Pasnainsky 62 Texas 118, based in part on, and paralleling the U.S. Supreme Court decision in Barnes v. District of Columbia, 91 US 540, in setting out the common law states:

> "When a city accepts a charter conferring defined powers, the resulting duty is imposed thereby to faithfully exercise them, and failing in this, it is responsible to one injured thereby."

All cities in Texas are voluntarily incorporated and/or chartered. Galena Park, Texas is a voluntarily organized city under a defined power home-rule charter.

The state has recognized the common law,

ut in succeeding years the court has adopted a doctrine of municipal immunity based upon distortion.

This is the basis for the next question in the argument: Whether or not adoption of that doctrine was an abridgement of the privileges and immunities clause of the 14th Amendment by infringing upon the right to seperation of powers which is the basis of the English system. Similarly, the actual argument was not recorded but the question is preserved in a bill of exception (transcript pg. 158). The Motion for Judicial Notice (transcript pg. 103) contains excerpts from the Texas Constitution which provides that "No law shall be passed except by bill" (Texas Constitution Article 3, Sec. 30). This point was also argued in the court of appeals who overruled the point in their opinion. It appears in the brief on pg. 30-31. Plain-

tiff argued that this was his right; seperation of the powers.

The argument was also presented to the Supreme Court of Texas a point of error No. 2 (writ, pg. 6,9), the court's action being an unconstitutional infringement upon the province of the legislature.

Furthermore, Plaintiff contended that the doctrine of municipal immunity from tort liability sets up an unreasonable classification among tort-feasors, as opposed to other principal and employee relationships. The point was argued prior to summary judgement in the district court and preserved as bill of exception No. 5 (transcript pg. 163). The district court sustained the immunity doctrine against the argument. It was argued to the Court of Civil Appeals and briefed in Appellant's Brief (pg. 31-36). The Court of Appeals overruled

the argument in its opinion. The question was presented to the Texas Supreme Court as point of error No. 3 (writ pg. 6,9).

The court of civil appeals based its opinion on another civil appeals case, Schultz v. City of Houston, 551 SW2d 494. The Schultz case is a gross distortion of the Texas tort claims act, Texas Revised Civil Statute Article 6252-19. This point is clearly made in Appellant's Motion for Rehearing, leave to file refused January 22, 1981. The court of appeals is the court of first instance for this question. The case was not brought under the provisions of the tort claims act. The motion is partially a reutterance of points orally argued to the court of appeals. The objections to the re-legislation of the statute by the court were presented to the Texas Supreme Court as point of error No. 5,6 (writ pg. 6,10);

Refused.

Although filed by the court, the Texas Supreme Court refused to hear the cause on March 18, 1981, failing to find any reversable error. That judgement is included as Appendix A herein.

REASONS FOR ALLOWANCE OF WRIT

This case involves the most important right that an American citizen has; that right to equality before the law. It encompasses the rights to equal treatment by the state, of equal justice and of equal access to the courts. Section one of the Fourteenth Amendment provides that all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law shich shall abridge the priviledges or immunities of citizens

of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

In the case of Washington National Insurance Co. v. Board of Review (N.J.) 64 A2d 443, the Supreme Court of New Jersey has crystallized the feelings of the United States Supreme Court on the Fourteenth Amendment; by stating:

> "...while the due process and equal protection guarantees are not coterminous in their spheres of protection, equality of right is fundamental in both. Each forbids class legislation arbitrarily discriminatory against some and favoring others in like circumstances. It is essential that the classification itself be reasonable and not arbitrary, and be based upon material and substantial distinctions and differences reasonably related to the subject matter of the legislation or considerations of policy, and that there be uniformity within the class. The equal protection of the laws means that no person or class of persons shall be denied the protection of the laws enjoyed by other persons or class-

> es of persons under similar conditions and circumstances, in their lives, liberty and property, and in the pursuit of happiness, both as respects priviledges conferred and burdens imposed." Hartford Steam Boiler Inspection and Insurance Co. v. Harrison, 301 US 459; Old Dearborn Distributing Co. v. Seagram Distillers Corp. 299 US 183; Concordia Fire Insurance Co. v. Illinois, 292 US 535; Sproles v. Binford, 286 US 374; Kentucky Finance Corp. v. Paramount Auto Exchange Corp., 262 US 544; Truax v. Corrigan, 257 US 312; Smith v. Texas, 233 US 630; Atchison, Topeka and Santa Fee R. Co. v. Matthews, 174 US 96...

Plaintiff Mr. Cronen has suffered injury as the victum of a wilful and malicious tort committed by persons acting in the employ of the city of Galena Park, Texas. The opinion of the state court has admitted that his case is based largely upon fact. The opinion decides that even police officers are liable for detaining another unlawfully, and that liability extends to anyone who participates in the unlawful detention or who directs or requests the detention.

After all, a tort-feasor is a tort-feasor. There is no reasonable classification involved here. Neither is there a reasonable classification based upon the employee relationship involved in this case. Recently there are two of numerous Texas false imprisonment cases decided by the Texas Appellate Court establishing that a master or principal is liable to one falsely imprisoned by the acts of an employee or agent acting within the scope of his employment, holding the corporation liable in damages for the acts of security police who were hired for the purpose of detaining people, also holding that the corporation could not obtain immunity by attempting to avoid the agency relationship; DuPree v. Piggly Wiggly Shop Rite Foods Inc., 542 SW2d 882; Kroger Co. v. DeMakes, 566 SW2d 653. In false imprisonment cases the common law relationship, be it agency, servant, employee

or contractor is irrelevant, for one who acts through another acts himself. The officers involved in this case stand in the same relationship to the city of Galena Park as do security police to their corporations, which are held liable. In all situations of private corporation the employer has been held liable for the acts of its security in false imprisonment actions. Texas has adopted the Common Laws of England which makes no distinctions between public, or municipal corporations and private corporations. Texas has no statute or constitutional provisions establishing any type of municipal immunity. The Texas legislature has not altered or repealed the common law liability of public corporations as regards this case. Equaljustice, therefore, demands that a principal, municipal corporation, be held responsible for the wilful torts of its employee police

department. The principals of common law confer the responsibility upon the city (Galveston v. Posnainsky, 62 Texas 118, pg. 28, herein).

The city of Galena Park is operating a revenue generating traffic business. The city acts through its police officers. All jurisdictions hold that a private corporation, who acts through its employees, is liable for the torts committed by those employees in the course of their business and duties. In absence of a legislative act establishing a reasonable classification among the corporations, a judicial doctrine adopting an arbitrary immunity for some public corporations sets up an infringement of the rights of a party injured by the corporation. That classification among tort-feasors is unreasonable and arbitrary.

It is furthermore important to stress that this so called immunity is but judi-

cial doctrine in Texas. It is not part of constitution, statute, maxim or principle of common law. It is not even a court rule. It is the personal prejudice of the court. This adopted doctrine has allowed the state to deprive its citizens of life, liberty and property without due process of law. That is a disposal of the rights guaranteed by the first section of the 14th Amendment. The court has infringed on on the right to seperation of powers, being a departure by a lower court from the usual course of judicial proceedings, which do not ordinarily include legislative function.

If the doctrine is allowed to stand, it is not difficult to concieve, that by decision of a state judge alone, a citizen could be deprived of the right to exercise religious freedom (Amendment 1), of the right of habeas corpus (Article 1, Section 9 p 2), of the right to petition and as-

semble (Amendment 1), could be subjected to unreasonable search and seisure (Amendment 4), could be subjected to cruel and unusual punishment (Amendment 8), could not be allowed to pass freely from place to place, could be denied the right to vote on account of race, color or previous condition of servitude (Amendment 15), or sex (Amendment 16), could be subjected to ex post facto laws (Article 1, Section 10), could be deprived of the right to speak freely and to use the press (Amendment 1), and could be denied or disparaged all the other unwritten rights retained by the people (Amendment 9) since time immortal and specifically granted to all free men, for us and for our heirs forever, all the underwritten liberties, to be had and holden by them and their heirs, of us and our heirs forever (Magna Charta of King John, 1215 AD, Section 2), adopted as part of the common

law, which are not repungant to the constitution or laws (Texas Revised Civil Statute, Article 1), including the restoration of his lands, castles, liberties or rights to any one dispossessed or deprived without the legal judgement of his peers (Magna Charta, Section 52); Meyer v. Nebraska, 262 US 390.

All those rights and others are guaranteed by the Constitution. The Texas judiciary has broken that guarantee.

The Supreme Court has continually held that in order to justify an infringement upon the rights guaranteed by the Constitution, there must exist something extreme and compelling, constituting a clear and present danger to the state. An example is stated by the Court in the case Sherbert v. Verner, 374 US 398:

> "We must next consider whether some compelling state interest enforced in the eligibility provisions of the South Carolina statute justifys the substantial infringement of Appellant's First

> Amendment right. It is basic that no showing merely of a rational relationship to some colorable state interest would suffice, in this highly sensitive constitutional area, 'only the gravest abuses, endangering paramount interests, give occasion for permissable limitation.' Thomas v. Collins 323 US 516. No such abuse or danger has been advanced in the present case."

In this case there is absolutely no evidence of any endangerment of paramount state interest which justify's depriving Mr. Cronen of the same right of recovery from the employer as that which is afforded the injured party in any other false imprisonment action.

There are no undue burdens imposed upon legitimate law enforcement concerns by requiring the use of due process of law in regards to suspected traffic offenders. It poses no substantial danger to the populus to require them to be responsible for the acts of their employees when they have voluntarily taken on the priviledge and responsibility of operating a traffic business. This is the re-

sponsibility of the common law.

Classifications based upon classes of tort-feasors are suspect.

Furthermore, unlike the Collins case cited above, the question here is not of a state statute enacted by a legislative body but of a policy declared by a majority of a lower state court to be desirable. This kind of classification and policy must require much closer scrunity and must meet a test much more stringent than whether it is reasonably related to "legitimate" public purposes. It must be so compelling and overriding that no other reasonable alternative can be offered. It can hardly be contended that granting the right's to recover for injuries suffered at the hands of a city possibly hurting a number of secret masonic lawyers is so overriding as to threaten the public safety or welfare.

The Court discusses the state's power to

restrict an individual's rights in the case Thomas v. Collins, 323 US 516:

> "The case confronts us again with the duty our system places on this Court to say where the individual's freedom ends and the state's power begins. Choice on that border, now as always delicate, is perhaps more so where the usual presumption supporting legislation is balanced by the preferred place given in our scheme to the great, the indispensable democratic freedoms secured by the first amendment." Cf. Schneider v. Irvington, 308 US 147; Cantwell v. Connecticut, 310 US 296; Prince v. Massachusetts, 321 US 158. That priority gives these liberties a sanctity and a sanction not permitting dubious intrusions. And it is the character of the right, not of the limitation, which determine what standard governs the choice. Compare United States v. Carolene Products Co. 304 US 144, 152-153."
>
> "For these reasons any attempt to restrict these liberties must be justified by clear public interest, threatened not doubtfully or remotely, but by clear and present danger. The rational connection between the remedy provided and the evil to be curbed, which in other contexts might support legislation against attack on due process grounds, will not suffice. These rights rest on firmer foundation."

The Texas Constitution (Article 1, Section 13) and the Fourteenth Amendment of the United States Constitution have in-

sured the right of recovery.

The opinion dispenses with that guarantee. Since the opinion is not based upon statute, but only on judicial feeling it is of paramount importance that the decision of lower court not be allowed to remain in force as law in Texas because all other liberties guaranteed by the Constitution could as easily be removed by following the precedent set by adoption of a judicial doctrine.

The matter is of extreme importance and the questions presented in this case have not been heretofore passed upon by the Court but should be in the interest of preservation of our Constitution.

The opinon of the state court has decided this important question of Federal Law in a way which is in conflict with the opinions of the United States Supreme Court in the cases of the city of Chicago v. Frank Sturges, and Barnes v.

the District of Columbia. The principals set forth in those cases are applicable to this case and were presented to the state courts. The cases are the foundation of the argument. Pray let us uphold the constitutional oath and not a consensus of the lawyers.

CONCLUSION

Plaintiff Mr. Cronen has suffered injury at the hands of the employees of Galena Park, Texas. In any similar case, not involving a municipal corporation, his injury would be compensated for by the Court with an award of damages against the corporation. Since the corporation is a city, however, Plaintiff has been deprived of that recovery against the corporation by a judicially adopted doctrine of immunity which is unfounded in the Texas Constitution, Statutes or English Common Law. Plaintiff, Mr.

Cronen, feels that the state court, has infringed upon his right to seperation of powers and abridged his priviledges and immunities by adopting the doctrine which sets up an unreasonable and suspect classification among tort-feasors. The doctrine is repungant to the United States Constitution.

PRAYER

Petitioner Mr. Cronen respectfully prays that the COURT will grant him what is carved in the marble over the entrance to the United States Supreme Court Building, to wit: "Equal Justice Under The Law" and grant him certiorari to the Court of Civil Appeals for the First Supreme Judicial District of Texas at Houston, Texas to forward the record, brief and all other proceedings in the instant cause for review by the Court and find thereupon that the judicial doctrine of municipal

immunity from liability for the torts of their employees is repungant to the priviledges and immunities and equal protection clauses of the Fourteenth Amendment to our Constitution.

Respectfully submitted,

Charles D. Cronen

Charles D. Cronen
P. O. Box 5371
Pasadena, Texas 77505
No Telephone
Petitioner, Pro Se

APPENDIX

APPENDIX A

IN THE SUPREME COURT OF TEXAS

No. C-92 March 18, 1981

CHARLES D. CRONEN) From HARRIS
) County,
vs.)
) FIRST
CITY OF GALENA PARK ET AL) District.

Application of petitioner for writ of error to the Court of Civil Appeals for the First Supreme Judicial District having been duly considered, and the Court having determined that the application presents no error requiring reversal of the judgment of the Court of Civil Appeals, it is ordered that said application be, and hereby is, refused.

It is further ordered that applicant, Charles D. Cronen, pay all costs incurred on this application.

I,GARSON R. JACKSON, Clerk of the Supreme Court of Texas, do hereby certify that the above and foregoing is a true

and correct copy of the order of the Supreme Court of Texas in the case numbered and styled as above, as the same appears of record in the minutes of said Court under the dates shown.

WITNESS my hand and the seal of the Supreme Court of Texas, at the City of Austin, this, the 6th day of April, 1981.

GARSON R. JACKSON, Clerk

By Fritz Born, Deputy

APPENDIX B

IN THE COURT OF CIVIL APPEALS HOUSTON

FIRST SUPREME JUDICIAL DISTRICT OF TEXAS

JUDGEMENT

OCTOBER 23, 1980

CHARLES D. CRONEN

NO. 17769 VS.

Appeal from District Court of Harris County. (Tr. Ct. #79 36661) Opinion delivered by Associate Justice Warren, Justices Peden and Evans sitting.

NIX AND THE CITY OF GALENA PARK ET AL

This cause, being an appeal from the judgment signed by the court below on April 25, 1980, came on to be heard on the transcript of the record, and the same being inspected, because it is the opinion of this Court that there was no error in the portion of the order granting a summary judgment in favor of the City of Galena Park, it is therefore

considered, adjudged and ordered that this portion of the judgment be affirmed.

And because it is further the opinion of this Court that there was error in the judgment except as herein above affirmed, it is therefore considered, adjudged and ordered that the judgment of the court below, except as hereinabove affirmed, be severed and as severed reversed and remanded for further proceedings in accordance with the opinion of this Court.

It is further ordered that the appellant, Charles D. Cronen, pay one-half of the costs incurred by reason of this appeal; and that the appellees, Jim Nix, Gerda L. Frederick, Larry Donnelly, D. L. Finney and Joe Price, jointly and severally, pay the remaining one-half of the costs incurred by reason of this appeal. It is further ordered that this decision be certified below for observance. Judgment rendered by panel consisting of

Justices Peden, Evans and Warren.

Affirmed in part and in part reversed and remanded and opinion filed October 23, 1980.

IN THE COURT OF CIVIL APPEALS HOUSTON
FIRST SUPREME JUDICIAL DISTRICT OF TEXAS

CHARLES D. CRONEN, APPELLANT

NO. 17769 VS.

NIX AND THE CITY OF GALENA PARK, ET AL,
APPELLEES

Appeal from the District Court of Harris County

This is an appeal from an order granting all defendants summary judgment on a false imprisonment suit.

The judgment as pertains to the City of Galena Park will be affirmed and as to all other parties will be reversed and remanded.

On August 24, 1977, appellant was arrested by appellee Jim Nix in the City

of Galena Park for allegedly running a red light. After appellant refused or was unable to supply Officer Nix with a home address, he was taken to the police station and required to post a cash bond. Being unable to do so, he was held for approximately ten hours before an attorney arrived and made the required bond. There are no allegations of physical abuse or property damage. Appellant seeks damages for mental anguish and lost wages, among other things, because of the alleged unlawful detention.

Appellant, acting pro se, urges ten points of error, as follows:

1. That the court erred in denying his motion to record the summary judgment proceedings.

2. That the court erred in denying his written motion for continuance.

3. That the court erred in upholding the doctrine of immunity contrary to the common law of England.

4. That the court erred in upholding the doctrine of immunity, which

was not the common law of England, by infringing on the province of the legislature.

5. That the court erred in upholding the doctrine of immunity, which was an unreasonable classification among tort feasors.

6. That the court erred in failing to allow him to complete his argument on the law before sustaining summary judgment.

7. That the court erred in failing to review his motion for judicial notice of the common law of England within the time allowed to reform his judgment and thereafter to reform that judgment.

8. That the court erred in sustaining summary judgment based upon a doctrine of immunity.

9. That the court erred in sustaining summary judgment for all appellees which included the peace officers.

10. That the court erred in sustaining summary judgment for appellees when appellant had raised a fact issue.

A hearing on a motion for summary judgment is purely one of law. No oral testimony is allowed and the court must decide whether the movant is entitled to judgment based on the pleadings, depositions,

answers to interrogatories and admissions together with any affidavits. These instruments are the same ones which will be reviewed by this court. A record would neither enhance nor detract from either party's case on appeal because we could no more consider oral testimony than could the trial court. Appellant's first point of error is overruled.

Appellant's Motion for Continuance presented to the trial court alleged that he was not ready because of the other personal matters and law cases that he had pending and that there was insufficient time for him to prepare for the summary judgment proceedings. Denial of a motion for continuance based on lack of time to prepare for trial is not an abuse of discretion. Niles v. Dean, 363 S.W.2d 317 (Tex.Civ.App.-Beaumont 1962, no writ).

Appellant was notified of the date of the summary judgment proceeding in excess of the 21 days required by Rule 166A Tex.R.Civ.P. He alledged no specific reason for continuing the hearing which would constitue an abuse of discretion by the court in denying the continuance. This point is overruled.

Appellant's third, fourth, fifth and eighth points of error complain of the trial court's upholding the doctrine of governmental immunity. These points are overruled. It is settled that except for those actions permitted under the Texas Tort Claims Act, art 6252-19, V.A.C.S., municipalities are immune for the negligent actions of its employees when they are acting in a governmental capacity. Schultz v. City of Houston, 551 S.W.2d 494, (Tex.Civ.App.-Houston [14th Dist.] 1977, no writ). It is also well settled that the operation of a police depart-

ment is a governmental function. Ellis v. City of West University Place, 171 S.W.2d 178, (Tex.Civ.App.-Galveston 1943, aff'd 175 S.W.2d 396.). Further, Section 14(10) of the Texas Tort Claims Act specifically excludes claims of false imprisonment from the actions allowed against a municipality. Appellant's ninth point of error complains that the trial court erred in granting summary judgment for all appellees including the police officers. This point of error is sustained.

A person who detains another unlawfully is liable for false imprisonment. Liability extends to anyone who participates in the unlawful detention or who directs or requests the detention. 25 Tex.Jur. Sec. 25. False Imprisonment. This includes preace officers. In Texas, the essential elements of false imprisonment are a wilful detention of the person, a detention without authority of law, and a detention against the consent

of the party detained. 25 Tex. Jur. Sec. 3. False Imprisonment. Sec. 153 of art. 6701d, V.A.C.S. authorizes a peace officer to arrest without a warrant any person found committing a traffic violation. Ciulla v. State, 434 S.W.2d 948 (Tex.Civ.App.-Houston [1st Dist.] 1968, no writ. Sec. 147 of 6701d provides that one arrested for a misdemeancr under the act shall be immediately taken before a magistrate when the person arrested demands an immediate appearance.

Sec. 148 of art. 6701d provides that (a) "Whenever a person is arrested for any violation of this act punishable as a misdemeanor, and such person is not taken immediately before a magistrate, as hereinbefore required, the arresting officer shall prepare in duplicate, written notice to appear in court..."

"(d) The arrested person in order to

secure release as provided in this section, must give his written promise so to appear in court by signing in duplicate, the written notice prepared by arresting officer... Thereupon, said officer shall forthwith release the person arrested, from custody."

The test for determing whether the officer complied with the statute is whether the conduct of the police was reasonable. Roberts v. Bohac , et al, 574 F.2d 1232, (5th Cir. 1978).

Appellant's case against the officers rests largely on fact. Even if the arrest is assumed to be legal, in order to entitle themselves to a summary judgment, the appellee officers would need to prove that not only was the arrest and detention lawful, but that the period of time which appellant was detained was reasonable under the circumstances, in light of

the statute authorizing such arrest and detention. These are fact issues which are extemely difficult to prove as a matter of law, except through the admission of a plaintiff, and in our case, such facts were not proved as a matter of law.

The order granting summary judgment in favor of the City of Galena Park is affirmed, and that part of the order granting summary judgment in favor of the other defendants is reversed and remanded.

/s/ James F. Warren

Associate Justices Peden and Evans also sitting.

Judgment rendered and opinion filed October 23, 1980.

APPENDIX C

JUDGMENT OR ORDER OF THE COURT GRANTING SUMMARY JUDGMENT FOR DEFENDANTS, ENTERED Volume 1892, Page 215, General Minutes District Courts, in and for Harris County Texas.

April 25, 1980

NO. 79-36661

CHARLES D. CRONEN	IN THE DISTRICT
VS.	COURT OF HARRIS
NIX AND THE CITY	COUNTY, TEXAS
OF GALENA PARK,	151ST JUDICIAL
ET AL	DISTRICT

ORDER GRANTING SUMMARY JUDGMENT

On the 7th day of April, 1980, came on to be heard the Joint Motion for Summary Judgment or, in the Alternative, Joint Motion for Partial Summary Judgment, of the Defendants herein, City of Galena Park, Chief Williard E. Cook, Jim Nix, Gerda L. Frederick, Larry Donnelly, D.L. Finney and Joe Price. The Defendants ap-

peared by and through their respective attorneys of record, and the Plaintiff appeared in his own behalf and presented arguments with respect to this Motion. The Court having considered the arguments of the parties, the affidavits on file herein, the Answers to Requests for Admissions of Charles D. Cronen, together with all other Summary Judgment evidence before the Court, it is

ORDERED, ADJUDGED and DECREED that the Joint Motion for Summary Judgment of Defendants, City of Galena Park, Chief Williard E. Cook, Jim Nix, Gerda L. Frederick, Larry Donnelly, D.L. Finney and Joe Price, is hereby GRANTED and it is, further,

ORDERED, ADJUDGED and DECREED that Plaintiff take nothing by this law suit, and this law suit is hereby DISMISSED, and all costs of Court are taxed against the party incurring said costs for which

let execution issue.

SIGNED this 25th day of April, 1980.

L.D. GODARD

JUDGE PRESIDING

APPENDIX D

IN THE SUPREME COURT OF TEXAS AND
IN THE COURT OF CIVIL APPEALS AT HOUSTON
FIRST SUPREME JUDICIAL DISTRICT OF TEXAS

CHARLES D. CRONEN	)	No. 17769
	)	
V.	)	No. C-92
	)	
CITY OF GALENA PARK, TEXAS	)	

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Comes now Charles D. Cronen, Plaintiff Appellant, Petitioner to the Court and gives this his notice that he will forward to the United States Supreme Court a Petition for Certiorari of the record of the cause herein in order that the judgment in the cause as regards the city of Galena Park, only, may be reviewed pursuant to 28 USC 1257(2,3).

Respectfully submitted,

Charles D. Cronen
P. O. Box 5371
Pasadena, Texas 77505
Petitioner, Pro Se

APPENDIX E

Art. 6252-19. Tort claims

Short Title

Section 1. This Act shall be known and cited as the Texas Tort Claims Act.

Definitions

Sec. 2. The following words and phrases as used in this Act unless a different meaning is plainly required by the context shall have the following meanings:

(1) "Unit of government" or "units of government" shall mean the State of Texas and all of the several agencies of government which collectively constitute the government of the States of Texas, specifically including, but not to the exclusion of, other agencies bearing different designations, all departments, bureaus, boards, commissions, offices, agencies, councils and courts; all political subdivisions, all cities, counties, school districts, levee improvement dis-

tricts, drainage districts, irrigation districts, water improvement districts, water control and improvement districts, water control and preservation districts, fresh water supply districts, navigation districts, conservation and reclamation districts, soil conservation districts, river authorities, and junior college districts; and all institutions, agencies and organs of government whose status and authority is derived either from the Constitution of the State of Texas or from laws passed by the Legislature pursuant to such Constitution. Provided, however, no new unit or units of government are hereby created.

(2) "Scope of employment" or "scope of office" shall mean that the officer, agent or employee was acting on behalf of a governmental unit in the performance of the duties of his office or employment or was in or about the performance of tasks law-

fully assigned to him by competent authority.

(3) "Officer, agent or employee" shall mean every person who is in the paid service of any unit of government by competent authority, whether full or part-time, whether elective or appointive , and whether supervisory or non-supervisory, it being the intent of the Legislature that this Act should apply to every person in such service of a unit of government, save and except as herein provided. Such definition, however, shall not include an independent contractor or an agent or employee of an independent contractor, or any person performing tasks the details of which the unit of government does not have the legal right to control.

Liability of Governmental Units

Sec. 3 Each unit of government in the state shall be liable for money damages

for property damage or personal injuries or death when proximately caused by the negligence or wrongful act or omission of any officer or employee acting within the scope of his employment or office arising from the operation or use of a motor-driven vehicle and motor-driven equipment, other than motor-driven equipment used in connection with the operation of floodgates or water release equipment by river authorities created under the laws of this state, under circumstances where such officer or employee would be personally liable to the claimant in accordance with the law of this state, or death or personal injuries so caused from some condition or some use of tangible property, real or personal, under circumstances where such unit of government, if a private person, would be liable to the claimant in accordance with the law of this state. Such liability is subject to the

exceptions contained herein, and it shall not extend to punitive or exemplary damages. Liability hereunder shall be limited to $100,000 per person and $300,000 for any single occurrence for bodily injury or death and to $10,000 for any single occurrence for injury to or destruction of property.

Waiver of Sovereign Immunity

Sec. 4 To the extent of such liability created by Section 3, immunity of the sovereign to suit, as heretofore recognized and practiced in the State of Texas with reference to units of government, is hereby expressly waived and abolished, and permission is hereby granted by the Legislature to all claimants to bring suit against the State of Texas, or any and all other units of government covered by this Act, for all claims arising hereunder.

Venue

Sec. 5. All cases arising under the provisions of this Act shall be insituted in the county in which the cause of action or a part thereof arises.

Cummulative Remedy

Sec. 6. This Act shall be cumulative in its legal effect and not in lieu of any and all other legal remedies which the injured person may pursue.

Laws and Rules Applicable

Sec. 7. The laws and statutes of the State of Texas and the Rules of Civil Procedure, as promulgated and adopted by the Supreme Court of Texas, insofar as applicable and to the extent that such rules are not inconsistent with the provisions of this Act, shall apply to and govern all actions broung under the provisions of this Act.

Unit of Government as Defendant; Service of Citation

Sec. 8. Suits instituted pursuant to the provisions of this Act shall name as defendant the unit of government against which liability is sought to be established. In suits against the state citation shall be served on the Secretary of State. In suits against other units of government citation shall be served in the manner prescribed by law for other civil cases. If no method is prescribed by law, then service may be had on the adminstrative head of the unit of government being sued, if available, and if not, the court in which the suit is pending may authorize service in such manner as may be calculated to afford the unit of government a fair opportunity to answer and defend the suit.

Counsel; Insurance

Sec. 9. The Attorney General of Texas shall defend all actions brought under the provisions of this Act against any

unit of government whose authority and jurisdiction is coextensive with the geographical limits of the State of Texas. All units of government whose area of jurisdiction is less than the entire State of Texas shall employ their own counsel in accordance with the organic act under which such unit of government is operating; provided, however, that all units of government are hereby expressly authorized to purchase policies of insurance providing protection for such units of government, their officers, agents and employees against claims brought under the provisions of this Act, and when they have acquired such insurance; they are further authorized to relinquish to the company providing such insurance coverage the right to investigate, defend, compromise and settle any such claim. In the case of suits defended by the Attorney General, he may be fully assisted by coun-

sel provided by insurance carrier. Neither the existence or amount of insurance shall ever be admissible in evidence in the trial of any case hereunder, nor shall the same be subject to discovery.

Compromise and Settlement

Sec. 10. Any and all causes of action brought under the provisions of this Act may be settled and compromised by the unit of government involved when, in the judgment of the Governor, in the case of the state, and in the judgment of the governing body of the unit of government in other cases, such compromise would be to the best interests of such government. It is specifically provided, however, that such approval shall not be required in those instances where insurance has been procured under the provisions of Section 9 hereof.

Collection of Judgments

Sec. 11. Judgments recovered against units of government pursuant to the provisions of this Act shall be enforced in the same manner and to the same extent as judgments are now enforced against such units of government under the statutes and law of Texas; and no additional methods of collecting judgments are granted by this Act. Provided, however, if the judgment is obtained against a unit of government that has procured a contract or policy of liability or indemnity insurance protection, the holder of the judgment may use such methods of collecting said judgment as are provided by the policy or contract and statutes and laws of Texas to the extent of the limits of coverage provided therein. It is expressly provided, however, that judgments under this Act becoming final during any fiscal year need not be paid by such unit of government un-

til the following fiscal year except to the extent that they may be payable by an insurance carrier. For the payment of any final judgment obtained under the provisions of this Act, a unit of government not fully covered by liability insurance is hereby authorized to levy an ad valorem tax, the rate of which, if found by the unit of government to be necessary, may exceed any legal limit otherwise applicable except as may be imposed by the Constitution of the State of Texas. In the event that judgments arising under the provisions of this Act become final against a unit of government in any one fiscal year in an aggregate amount, exclusive of insurance coverage, if any, in excess of one percent of the budgeted tax funds, exclusive of general obligation debt service requirements, of such unit of government for such fiscal year, then such unit of government may

pay such judgments over a period of not more than five years in equal annual installments and shall pay interest on the unpaid balance at the rate provided by law.

Effect of Judgment or Settlement

Sec. 12. (a) The judgment or settlement in an action or claim under this Act shall constitute a complete bar to any action by the claimant, by reason of the same subject matter, against the employee of a unit of government whose act or omission gave rise to the claim.

(b) The State or a political subdivision may not require any employee to purchase liability insurance as a condition of his employment where the State or political subdivision is insured by a policy of liability insurance.

Liberal Construction

Sec. 13. The provisions of this Act shall be liberally construed to achieve

the purpose hereof.

Exemptions

Sec. 14. The "provisions" of this Act shall not apply to:

(1) Any claim based upon an act or omission which occurred prior to the effective date of this Act.

(2) Any claim based upon an act or omission of the Legislature, or any member thereof acting in his official capacity, or to the legislative functions of any unit of government subject to the provisions hereof.

(3) Any claim based upon an act or omission of any of the courts of the State of Texas, or any member thereof acting in his official capacity, or to the judicial functions of any unit of government subject to the provisions hereof.

(4) Any claim based upon an act or omission of an officer, agent or employee of any unit of government in the execu-

tion of the lawful orders of any court.

(5) Any claim arising in connection with the assessment or collection of taxes by any unit of government.

(6) Any claim arising out of the activities of the National Guard, the State Militia , or the Texas State Guard, when on active duty pursuant to lawful orders of competent authority.

(7) Any claim based upon the failure of a unit of government to perform any act which said unit of government is not required by law to perform. If the law leaves the performance or nonperformance of an act to the discretion of the unit of government, its decision not to do the act, or its failure to make a decision thereon, shall not form the basis for a claim under this Act.

(8) Any claim arising out of the action of an officer, agent or employee while responding to emergency calls or reaching to

emergency situations when such action is in compliance with the laws and ordinances applicable to emergency action.

(9) Any claim based on an injury or death connected with any act or omission arising out of civil disobedience, riot, issurection or rebellion or arising out of the failure to provide, or the method of providing, police or fire protection.

(1) Any claim arising out of assault, battery, false imprisonment, or any other intentional tort including, but not limited to, disciplinary action by school authorities.

(11) Any claim based upon the theory of attractive nuisance.

(12) Any claim arising from the absence, condition, or malfunction of any traffic or road sign, signal, or warning device unless such absence, condition, or malfunction shall not be corrected by the governmental unit responsible within a

reasonable time after notice, or any claim arising from the removal or destruction of such signs, signals or devices by third parties except on failure of the unit of government to correct the same within such reasonable time, after actual notice. Nothing herein shall give rise to liability arising from the failure of any unit of government to initially place any of the above signs, signals, or devices when such failure is the result of discretionary actions of said governmental unit. The signs, signals and warning devices enumerated above are those used in connection with hazards normally connected with the use of the roadway, and this section shall not apply to the duty to warn of special defects such as excavations or roadway obstructions.

Individual Immunity

Sec. 15. Notwithstanding any provision hereof, the individual immunity of public

officers, agents or employees of government from tort claims for damages is hereby preserved to the extent and degree that such persons presently are immunized.

Notice of Death or Injury

Sec. 16. Except where there is actual notice on the part of the governmental unit that death has occurred or that the claimant has received some injury or that property of the claimant has been damaged, any person making a claim hereunder shall give notice of the same to the governmental unit against which such claim is made, reasonably describing the damage or injury claimed and the time, manner and place of the incident from which it arose, within six months from the date of the incident. Provided, however, except where there is such actual notice, charter and ordinance provisions of cities requiring notice within a charter period

permitted by law are hereby expressly ratified and approved.

Payment of Claim Against State Supported College or University

Sec. 17. No claim or judgment against a state-supported senior college or university, under this Act, shall be payable except by a direct appropriation made by the Legislature for the purpose of satisfying claims and/or judgments, except in the event insurance has been acquired as provided in Section 9, in which case the clamant is entitled to payment to the extent of such coverage as in other cases.

Exclusions

Sec. 18. (a) This Act shall not apply to any proprietary function of a municipality. The term "motor-driven equipment" as used herein shall not be construed so as to include medical equipment, such as, but not limited to iron lungs, located in

hospitals.

(b) As to premise defects, the unit of government shall owe to any claimant only the duty owed by private persons to a licensee on private property, unless payment has been made by the claimant for the use of the premises. Provided, however, that the limitation of duty contained in this subsection shall not apply to the duty to warn of special defects such as excavations or obstructions on highways, roads or streets, nor shall it apply to any such duty to warn of the absence, condition or malfunction of traffic signs, signals or warning devices as is required in Section 14(12) hereof.

Workmen's Compensation

Sec. 19. Any governmental unit carrying Workmen's Compensation Insurance or acceptirg this provisions of the Workmen's Compensation Act of the State of Texas shall be entitled to all of the privi-

leges and immunities granted by the Workmen's Compensation Act of the State of Texas to private persons and corporations.

Application School and Junior College Districts

Sec. 19A. The provisions of this Act shall not apply to school districts or to junior college districts except as to motor vehicles.

Repealer

Sec. 20. All laws or parts of law, and all enactments, rules and regulations or any and all units of government, and all organic laws of such units of government, in conflict herewith are hereby repealed, annulled and voided, to the extent of such conflict.

Severability

Sec. 21. In the event any section, subsection, paragraph, sentence or clause of this Act shall be declared unconstitutional or void, the validity of the remainder of

this Act shall not be affected or impaired thereby; and it is hereby declared to be the policy and intent of the Legislature to enact the valid portions of this Act, notwithstanding the invalid portions, if any.

Effective Date

Sec. 22. This Act shall be effective from and after January 1, 1970.

Acts 1969, 61st Leg., p. 874, ch. 292, eff. Jan. 1, 1970. Amended Acts 1971, 62nd Leg., p. 1743, ch. 509, Sec. 1, Acts 1973, 63rd Leg., p. 77, ch. 50, Sec. 1,2.

Emphasis added.

APPENDIX F

COURT OF CIVIL APPEALS

FIRST SUPREME JUDICIAL DISTRICT

HOUSTON, TEXAS 77002 November 27, 1980

Re: 17769, Charles D. Cronen v. Nix and the City of Galena Park et al, from Harris

Please be advised the Court today GRANTED appellant's motion to extend the time for filing a motion for rehearing, and such motion for rehearing heretofore received has now been duly filed in the above cause as of this date.

Respectfully,

MARIBELLE REICH,

Clerk

Kathyrn Cox,

Chief Deputy

COURT OF CIVIL APPEAL

FIRST SUPREME JUDICIAL DISTRICT

HOUSTON, TEXAS 77002

December 11, 1980

Re: 17769, Charles D. Cronen v. Nix and the City of Galena Park et al, from Harris

Please be advised the Court today:

1. OVERRULED appellant's motion for rehearing in the above cause; and

2. OVERRULED appellees' motion for rehearing in the above cause.

Respectfully,

MARIBELLE REICH,

Clerk

Kathyrn Cox,

Chief Deputy

COURT OF CIVIL APPEALS

FIRST SUPREME JUDICIAL DISTRICT

HOUSTON, TEXAS 77002

January 22, 1981

Re; 17769, Charles D. Cronen v. Nix and the City of Galena Park et al, from Harris

Please be advised the Court today REFUSED appellant's motion for leave to file second motion for rehearing in the above cause.

Respectfully,

MARIBELLE REICH,

Clerk

Kathyrn Cox,

Deputy

ACKNOWLEDGEMENT OF SERVICE

I, Donald B. McFall, attorney of record for the city of Galena Park, Texas hereby acknowledge receipt of three copies of this Petition for Certiorari along with a Notice of Appeal to the Supreme Court of the United States on this _____ day of June, 1981.

Donald B. McFall
T.B.Lisc.#13595000
1100 Esperson Bldg.
Houston, Texas 77002
713/237-3243

STATE OF TEXAS

COUNTY OF HARRIS

AFFIDAVIT OF SERVICE

Before me the undersigned authority this day personally appeared Charles D. Cronen who after being by me sworn upon oath deposes and says that he personally served three copies of this Petition for Certiorari on Dee Pelty, Secretary to/
Donald B. McFall, Atty.,
1332 Esperson Bldg.
Houston,Tx. 77002
On the 13th floor

who is the counsel of record for the city of Galena Park, Texas on June 11th, 1981. He also says that he served, by depositing in a U.S. Post Office with first class postage prepaid and properly addressed, copies of a notice of the petition for certiorari to the following:

Garson R. Jackson, Clerk
Supreme Court of Texas
Box 12248 Capitol Station
Austin, Texas 78711

Maribelle Reich, Clerk
Court of Civil Appeals
First Supreme Judicial District of Texas
604 Harris County Civil Courts Bldg.
301 Fannin
Houston, Texas 77002

For defendants Cook and Galena Park, Texas
Mr. Donald B. McFall, Atty.
Butler, Binion, Rice, Cook & Knapp
1100 Esperson Buildings
Houston, Texas 77002

For defendants Nix, Donnelly, Frederick, Finney & Price
Mr. W.B. Irwin, Jr., Atty.
103 Eastway St.
Galena Park, Texas 77547

Charles D. Cronen

Subscribed and Sworn to by me this 11th day of June, 1981

Notary Public in and for
Harris County, Texas

My commission expires on 9/30/84.